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UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA
EASTERN DIVISION

NICOLETTE GLAZER

Plaintiff,

vs.

UNITED STATES DEPARTMENT
OF STATE,

Defendant

Case No.:

JUDGE:

Magistrate:

COMPLAINT FOR
DECLARATORY AND
INJUNCTIVE RELIEF UNDER
THE FREEDOM OF
INFORMATION ACT

1. This is an action under the Freedom of Information Act, ("FOIA")
5 U.S.C. § 552, seeking wrongfully withheld agency records relating to
the United States Department of State (hereinafter 'DOS')'s
administration of the diversity visa programs for Fiscal Years 2022 and
2023. This complaint also seeks a declaratory and injunctive relief to
remedy Defendant's pattern and practice of systemic violations of FOIA

COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF UNDER THE FREEDOM OF
INFORMATION ACT - 1

1 which includes: (1) failure to make determinations concerning FOIA
2 requests within the mandated statutory time periods; (2) failure to
3 conduct proper searches to locate documents responsive to FOIA
4 requests; (3) failure to segregate non-exempt material in records to
5 which ICE had applied redactions; and (4) failure to allocate sufficient
6 resources to address its ever-growing FOIA backlog.
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10 2. Plaintiff Glazer has been irreparably harmed by Defendant's
11 repeated and deliberate violations of the Act.
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13 **Jurisdiction and Venue**

14 3. This Court has subject matter jurisdiction over this action
15 pursuant to 28 U.S.C. § 1331 and 5 U.S.C. § 522(a)(4)(B). This Court
16 has further jurisdiction to grant declaratory relief pursuant to 28 U.S.C.
17 §2201-2202.
18
19

20 4. Venue is proper under 5 U.S.C. § 552(a)(4)(B) because Plaintiff
21 Glazer resides within this District.
22

23 **Parties**

24 5. Plaintiff is a lawyer with a principal place of business in Los
25 Angeles County and Riverside County and a residence in Riverside
26 County, California.
27

1 6. The U.S. Department of State (“DOS”) is a cabinet department of
2 the United States federal government and an executive agency with the
3 primary mission of formulation and execution of U.S. foreign policy.
4
5 DHS is an agency within the meaning of 5 U.S.C. § 522(f)(1).
6

7 7. In addition to records pertaining to the formulation and execution
8 of U.S. foreign policy, DOS maintains records that pertain to
9 individuals, such as applications for U.S. passports, applications for
10 U.S. visas, records on consular assistance given abroad by U.S. Foreign
11 Service posts to U.S. citizens and lawful permanent residents, and
12 statistical reports for its activities, including visa issuance. DOS, thus,
13 has custody, possession, and control over the records sought by
14 Plaintiff under the Act, and had had such custody, possession, and
15 control at the time the records were requested and thereafter.
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20 **FOIA Request**

21 8. On 29 July 2023 Plaintiff submitted a request to DOS for the
22 following records, pursuant to FOIA:
23

- 24 *1. Number of Diversity Visas issued by month and in total for FY*
25 *2022 and FY2023. 2. Number of Diversity Visas issued by month*
26 *and in total for FY 2022 and FY2023 for the following consulates:*
27

1 *Warsaw, Poland; Frankfurt, Germany; Cairo, Egypt, Ankara,*
2 *Turkey; Kathmandu, Nepal; Casablanca, Morocco; and Algiers,*
3 *Algeria; 3. policies, practices, and implemented safeguards by the*
4 *State Department to assure that the statutory DV visa cap is not*
5 *exceeded; and 4. all emails, memoranda, special operating*
6 *procedures, cables, and manuals reflecting and memorializing how*
7 *the State Department is monitoring the quarterly and annual*
8 *allocations, issuance, and visa number usage for FY2022 and FY*
9 *2023 so that the statutory visa cap of 55,000 visas is not exceeded.*
10 *This request also seeks the records reflecting the searches*
11 *performed in response to this request. The request covers the*
12 *period from 1 May 2021 to THE PRESENT (Date Range for*
13 *Record Search: From 05/01/2021 To 07/29/2023)*

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20 9. On 29 July 2023 at 5:38:25 PM Plaintiff received an email from
21 foiastatus@state.gov notifying her that Defendant had received the
22 FOIA request, assigned it number F-2023-11394, and that she “will
23 receive a formal acknowledgement to your request in no later than 10
24 working days.”
25
26
27

1 10. Plaintiff received no “formal acknowledgment” nor any other
2 communication from Defendant with respect to the FOIA request.
3

4 11. Defendant did not issue a timely determination on Plaintiff’s
5 request and did not produce any of the requested responsive records.
6

7 12. Defendant’s FOIA online portal shows that FOIA request F-2023-
8 11394 was “received” on 31 July 2023 and that it has an “estimated
9 delivery date” of 12 September 2023. (Exhibit A).
10

11 13. As of 20 October 2023 57 business days have elapsed since
12 Plaintiff submitted her request. This is 37 business days past the FOIA
13 deadline.
14

15 14. Plaintiff has exhausted all available administrative remedies.
16

17 **Causes of Action**

18 *Count I – Violation of FOIA*

19

20 15. All previous paragraphs are incorporated as though fully set forth
21 herein.
22

23 16. Plaintiff has a statutory right under the FOIA Act to obtain the
24 agency records properly requested in her 29 July 2023 request.
25
26
27

1 17. No legal basis exists for Defendant's failure to promptly docket,
2 process, respond, and produce responsive agency records in accordance
3 with the timing and other requirements of the Act.
4

5 18. Defendant's failure to disclose all responsive agency records in
6 connection with Plaintiff's request identified above, as well as its failure
7 to (1) docket and process the request; (2) timely respond to the request
8 and (3) conduct proper searches to locate documents responsive to the
9 request, each violating the Act, as well as regulations promulgated by
10 DOS.
11
12
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14 19. As of the date of this Complaint, Defendant has failed to issue a
15 determination and to produce all records requested by Plaintiff or to
16 demonstrate that such records are lawfully exempt from production.
17 See 5 U.S.C. § 552(a)(6)(C). Nor has Defendant notified Plaintiff of the
18 scope of any responsive records it intends to produce or withhold and
19 the reasons for any withholdings, nor informed Plaintiff that it may
20 appeal any specific, adverse determination.
21
22
23

24 20. By failing to timely process and respond to Plaintiff's request
25 within the statutorily prescribed time limits, Defendant has violated its
26 duties under the FOIA Act, including but not limited to its duties to
27
28 COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF UNDER THE FREEDOM OF
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1 conduct a reasonable search for responsive records, issue a timely
2 determination, and to produce all responsive, reasonably segregable,
3 non-exempt information. Therefore, Defendant is unlawfully
4 withholding records requested by Plaintiff pursuant to 5 U.S.C. § 552.
5

6
7 21. Plaintiff is being irreparably harmed by reason of Defendant's
8 unlawful withholding of records responsive to Plaintiff's FOIA request
9 and the failure to comply with Defendant's obligations under FOIA, and
10 Plaintiff will continue to be irreparably harmed unless Defendant
11 is compelled to conform its conduct to the requirements of the law.
12

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14 *Count II – Declaratory and Injunctive Relief*
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16 22. Plaintiff re-alleges and incorporates paragraphs 1 through 13
17 above.
18

19 23. Defendant DOS has a mandatory statutory duty under 5 U.S.C. §
20 552(a)(3) to conduct a reasonable search for records responsive to FOIA
21 requests and to make a determination on each request within the time
22 period set forth in 5 U.S.C. § 552(a)(6): 20 business days, to be extended
23 by no more than ten business days if the agency notifies the requester
24 in writing of the existence of "unusual circumstances." 5 U.S.C. §
25 522(a)(6)(B)(i)
26
27

1 24. DOS has failed to make a determination on Plaintiff's FOIA
2 request within the timeframes required by statute. Defendant's failures
3 are part of a pattern and practice of such deliberate violations of FOIA.
4 Exceptional circumstances do not justify DOS's delay in processing
5 FOIA requests.
6

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8 25. DOS has failed to allocate sufficient resources to address its FOIA
9 backlog, including allocating sufficient budgetary and personnel
10 resources to comply with the timeframes imposed by the Act.
11

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13 26. Defendant's backlog and repeated violation of the determination
14 requirements of the Act demonstrate the existence of a pattern and
15 practice of deliberate and repeated failures to make timely
16 determinations on FOIA requests, process appeals, and
17 promptly produce responsive records within the statutory time periods
18 and in good faith.
19

20
21 27. Defendant also routinely fails to conduct good faith searches for
22 records and redacts information that is not within the scope of the
23 carefully crafted statutory exceptions. As a result, Defendant is
24 precluding the public from monitoring its actions and performance.
25
26

1 28. No legal ground, justification, or excuse exists for Defendant's
2 nationwide pattern and practice of failing to meet the statutory
3 deadlines with respect to properly submitted FOIA requests and to
4 discharge its statutory duties in good faith.
5

6 **REQUEST FOR RELIEF**

7
8 Plaintiff requests that judgment be entered in her favor and against
9 Defendant, and that the Court:

10
11 A. Order Defendants and any of their agents or other persons,
12 departments, or components acting for, with, by, through, or under
13 them, to conduct a prompt, reasonable search for records responsive to
14 Plaintiff's request;
15

16
17 B. Permanently enjoin and restrain Defendant and any of Defendant's
18 agents or other persons, departments, or components acting for, with,
19 by, through, or under them from withholding the agency records at
20 issue in this case;
21

22
23 C. Declare that the requested records by Plaintiff are not exempt from
24 disclosure under FOIA, and order Defendant to disclose the requested
25 records in their entirety and make copies available to the Plaintiff;
26

1 D. Declare that Defendant's pattern and practice of failing to make
2 determinations on requests within the statutory time frames violate the
3 Act;

4
5 E. Declare that Defendant's pattern and practice of failing to make
6 determinations on requests remanded for further processing and
7 promptly notify the requestor of its determinations violate the Act;

8
9 F. Award Plaintiff reasonable attorney's fees and costs pursuant to 5
10 U.S.C. § 552(a)(4)(E);
11 and,

12
13 G. Award all other relief to Plaintiff that the Court deems just,
14 equitable, and proper.

15
16 20 October 2023

17
18 Respectfully submitted

19
20 *s/Nicolette Glazer*

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